

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT
OF NORTH CAROLINA
No. 1:22-cv-611

COMMON CAUSE, ELIZABETH)
MARION SMITH, SETH EFFRON,)
JAMES M. HORTON, TYLER C.)
DAYE, and SABRA J. FAIRES,)

Plaintiffs,)

v.)

TIMOTHY K. MOORE, Speaker,)

North Carolina House of)
Representatives; and PHILLIP E.)
BERGER, President Pro Tempore,)
North Carolina Senate,)

Defendants.)

**CONSENT MOTION FOR
LEAVE TO FILE SECOND
AMENDED COMPLAINT**

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, Plaintiffs Elizabeth Marion Smith, Seth Effron, James M. Horton, Tyler C. Daye, and Sabra J. Faires, with consent of counsel for Defendants, move for leave to file their Second Amended Complaint. In support of the same, Plaintiffs show the Court the following:

1. On August 2, 2022, Plaintiffs filed their original Complaint in the United States District Court for the Middle District of North Carolina. (D.E. 1).
2. On September 20, 2022, Plaintiffs filed an amended complaint as of right. (D.E. 11).

3. On September 23, 2022, Defendants filed a motion for extension of time to answer. (D.E. 12). The Court granted Defendants' motion for an extension to answer the complaint until October 14, 2022. (D.E. 12).

4. On October 14, 2022, Defendants filed a motion to dismiss under Federal Rules of Civil Procedure 12(b)(1), for lack of jurisdiction, and 12(b)(6), for failure to state a claim upon which relief can be granted. (D.E. 14). Defendants also filed a memorandum in support of their motion. (D.E. 15).

5. On November 4, 2022, Plaintiffs filed a response in opposition to Defendants' motion to dismiss. (D.E. 16).

6. On November 18, 2022, Defendants filed a reply in response to Plaintiffs' response. (D.E. 17).

7. The motions and replies are pending before the Court.

8. Rule 15(a)(2) of the Federal Rules of Civil Procedure states: "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

9. Plaintiffs seek to add the Governor, in his official capacity, as a party Defendant in this case.

10. Counsel for the Defendants, Timothy K. Moore and Phillip E. Berger, have consented, in writing, to this amendment. (Exhibit B).

11. Given the early stage of the proceedings, amendment of the complaint will not impose an undue delay or prejudice on Defendants.

12. A copy of the proposed Second Amended Complaint is attached hereto as Exhibit A.

WHEREFORE, Plaintiffs respectfully move that the Court enter the proposed order filed herewith granting leave for Plaintiffs to file the Second Amended Complaint.

Respectfully submitted this 12th day of December 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such to the following:

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This the 12th day of December 2022.

POYNER SPRUILL LLP
By: /s/ Edwin M. Speas, Jr.
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